

COMMITTEE ON COMMERCE AND ECONOMIC DEVELOPMENT

SENATE AMENDMENTS TO S.B. 1410

(Reference to printed bill)

1 Page 1, strike lines 2 through 44

2 Strike pages 2, 3 and 4

3 Page 5, strike lines 1 through 38

4 Renumber to conform

5 Page 6, strike lines 35 through 44

6 Strike pages 7 and 8, insert:

7 "D. The certificate of disclosure shall set forth all of the
8 following:

9 1. The following information regarding all persons who at the time of
10 its delivery are officers, directors, trustees, incorporators and persons
11 controlling or holding over ten per cent of the issued and outstanding common
12 shares or ten per cent of any other proprietary, beneficial or membership
13 interest in the corporation:

14 (a) Whether any of the persons have been convicted of a felony
15 involving a transaction in securities, consumer fraud or antitrust in any
16 state or federal jurisdiction within the seven year period immediately
17 preceding the execution of the certificate.

18 (b) Whether any of the persons have been convicted of a felony, the
19 essential elements of which consisted of fraud, misrepresentation, theft by
20 false pretenses or restraint of trade or monopoly in any state or federal
21 jurisdiction within the seven year period immediately preceding the execution
22 of the certificate.

23 (c) Whether any of the persons are or have been subject to an
24 injunction, judgment, decree or permanent order of any state or federal court
25 entered within the seven year period immediately preceding the execution of
26 the certificate, if the injunction, judgment, decree or permanent order
27 involved any of the following:

1 (i) The violation of fraud or registration provisions of the
2 securities laws of that jurisdiction.

3 (ii) The violation of the consumer fraud laws of that jurisdiction.

4 (iii) The violation of the antitrust or restraint of trade laws of
5 that jurisdiction.

6 (d) With regard to any of the persons who have been convicted of the
7 crimes or who are the subject of the judicial action described in
8 subdivisions (a), (b) and (c) of this paragraph, information regarding:

9 (i) Identification of the persons, including present full name, all
10 prior names or aliases, including full birth name, present home address, all
11 prior addresses for the immediately preceding seven year period, ~~AND~~ date
12 and location of birth ~~and social security number~~.

13 (ii) The nature and description of each conviction or judicial action,
14 the date and location, the court and public agency involved, and the file or
15 cause number of the case.

16 2. A brief statement disclosing whether any persons who at the time of
17 its delivery are officers, directors, trustees, incorporators and persons
18 controlling or holding over twenty per cent of the issued and outstanding
19 common shares or twenty per cent of any other proprietary, beneficial or
20 membership interest in the corporation and who have served in any such
21 capacity or held a twenty per cent interest in any other corporation on the
22 bankruptcy, ~~OR~~ receivership ~~or charter revocation~~ of the other corporation.
23 If so, for each corporation, the certificate shall include:

24 (a) The names and addresses of each corporation and the person or
25 persons involved.

26 (b) The state in which each corporation:

27 (i) Was incorporated.

28 (ii) Transacted business.

29 (c) The dates of corporate operation.

30 3. The signatures of all of the incorporators.

1 4. The date of its execution, which shall be not more than thirty days
2 before its delivery to the commission.

3 5. A declaration by each signer that he swears to its contents under
4 penalty of law.

5 E. The certificate of disclosure may set forth the name and address of
6 any other person whom the incorporators elect to be the subject of those
7 disclosures required under subsection D, paragraph 1 of this section.

8 F. If within sixty days after delivering the articles of incorporation
9 and certificate of disclosure to the commission any person becomes an
10 officer, director, trustee or person controlling or holding over ten per cent
11 of the issued and outstanding shares or ten per cent of any other
12 proprietary, beneficial or membership interest in the corporation and the
13 person was not the subject of the disclosures set forth in the certificate of
14 disclosure, the incorporators or, if the organization of the corporation has
15 been completed as provided in section 10-205, the corporation shall execute
16 and deliver to the commission within the sixty day period a declaration,
17 sworn to under penalty of law, setting forth all information required by
18 subsection D, paragraph 1 of this section regarding the person. If the
19 incorporators or, as applicable, the corporation fail to comply with this
20 subsection, the commission may administratively dissolve the corporation
21 pursuant to section 10-1421.

22 G. If any of the persons described in subsection D, paragraph 1 of
23 this section have been convicted of the crimes or are the subject of the
24 judicial action described in subsection D, paragraph 1 of this section, the
25 commission may direct detailed interrogatories to the persons requiring any
26 additional relevant information deemed necessary by the commission. The
27 interrogatories shall be completely answered within thirty days after mailing
28 of the interrogatories. With respect to corporations incorporating or
29 seeking authority to transact business, articles of incorporation or an
30 application for authority shall not be filed until all outstanding
31 interrogatories have been answered to the satisfaction of the commission.
32 With respect to existing domestic and foreign corporations, if the

1 interrogatories are not answered as provided in this subsection or the
2 answers to the interrogatories otherwise indicate proper grounds for an
3 administrative dissolution, the commission shall initiate an administrative
4 dissolution in accordance with chapters 1 through 17 of this title.

5 H. On a quarterly updated basis, the commission shall provide to the
6 attorney general a list of all persons who are convicted of the crimes or who
7 are the subject of the judicial action described in subsection D, paragraph 1
8 of this section as indicated by the certificates of disclosure filed during
9 the preceding three months.

10 I. Any person who executes or contributes information for a
11 certificate of disclosure and who intentionally makes any untrue statement of
12 material fact or withholds any material fact with regard to the information
13 required in subsection D, paragraph 1 of this section is guilty of a class 6
14 felony."

15 Page 9, strike lines 1 through 30

16 Renumber to conform

17 Page 13, line 20, after "publication" insert "OR OTHER APPROPRIATE EVIDENCE OF
18 PUBLICATION"

19 Strike lines 24 and 25, insert:

20 "7. The corporation has failed to comply with section 10-202,
21 subsection F."

22 Renumber to conform

23 Lines 34 and 35, strike "~~file a certificate of disclosure or~~" insert "file a
24 certificate of disclosure or"

25 Line 43, strike "~~and a certificate of disclosure~~" insert "and a certificate of
26 disclosure"

27 Line 44, after the period strike remainder of line

28 Strike line 45

Page 14, line 1, strike "~~requirements of section 10-202, subsection F.~~" insert "The certificate of disclosure shall contain the information set forth in section 10-202, subsection D and is subject to the requirements of section 10-202, subsection F."

Lines 29 and 30, strike "~~and the certificate of disclosure~~" insert "and the certificate of disclosure"

Page 16, line 23, after "affidavit" insert "OR OTHER APPROPRIATE EVIDENCE"

Line 31, strike "~~file a certificate of disclosure or~~" insert "file a certificate of disclosure or"

Strike lines 37 through 44

Strike pages 17 through 22

Page 23, strike lines 1 through 26

Renumber to conform

Page 24, strike lines 24 through 45

Strike page 25

Page 26, strike lines 1 through 22, insert:

"D. The certificate of disclosure shall set forth all of the following:

1. The following information regarding all persons who at the time of its delivery are officers, directors, trustees and incorporators:

(a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the seven year period immediately preceding the execution of the certificate.

(b) Whether any of the persons have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the seven year period immediately preceding the execution of the certificate.

1 (c) Whether any of the persons are or have been subject to an
2 injunction, judgment, decree or permanent order of any state or federal court
3 entered within the seven year period immediately preceding the execution of
4 the certificate, if the injunction, judgment, decree or permanent order
5 involved any of the following:

6 (i) The violation of fraud or registration provisions of the
7 securities laws of that jurisdiction.

8 (ii) The violation of consumer fraud laws of that jurisdiction.

9 (iii) The violation of the antitrust or restraint of trade laws of
10 that jurisdiction.

11 (d) With regard to any of the persons who have been convicted of the
12 crimes or who are the subject of the judicial action described in
13 subdivisions (a), (b) and (c) of this paragraph, information regarding:

14 (i) Identification of the persons, including present full name, all
15 prior names or aliases, including full birth name, present home address, all
16 prior addresses for the immediately preceding seven year period, ~~AND~~ date
17 and location of birth ~~and social security number~~.

18 (ii) The nature and description of each conviction or judicial action,
19 the date and location, the court and public agency involved, and the file or
20 case number of the case.

21 2. A brief statement disclosing whether any persons who at the time of
22 its delivery are officers, directors, trustees and incorporators and who have
23 served in any such capacity in any other corporation on the bankruptcy, ~~OR~~
24 receivership ~~or charter revocation~~ of the other corporation. If so, for each
25 corporation, the certificate shall include:

26 (a) The names and addresses of each corporation and the person or
27 persons involved.

28 (b) The state in which each corporation:

29 (i) Was incorporated.

30 (ii) Transacted business.

31 (c) The dates of corporate operation.

1 3. The signatures of all the incorporators.

2 4. The date of its execution, which shall be not more than thirty days
3 before its delivery to the commission.

4 5. A declaration by each signer that the signer swears to its contents
5 under penalty of law.

6 E. The certificate of disclosure may set forth the name and address of
7 any other person whom the incorporator or incorporators choose to be the
8 subject of those disclosures required under subsection D, paragraph 1 of this
9 section.

10 F. If within sixty days after delivering the articles of incorporation
11 and certificate of disclosure to the commission any person becomes an
12 officer, director or trustee and the person was not the subject of the
13 disclosures set forth in the certificate of disclosure, the incorporator or
14 incorporators or, if the organization of the corporation has been completed
15 as provided in section 10-3205, the corporation shall execute and deliver to
16 the commission within the sixty day period a declaration, sworn to under
17 penalty of law, setting forth all information required by subsection D,
18 paragraph 1 of this section, regarding the person. If the incorporator or
19 incorporators or, as applicable, the corporation fails to comply with this
20 subsection, the commission may administratively dissolve the corporation
21 pursuant to section 10-11421.

22 G. If any of the persons described in subsection D, paragraph 1 of
23 this section have been convicted of the crimes or are the subject of the
24 judicial action described in subsection D, paragraph 1 of this section, the
25 commission may direct detailed interrogatories to the persons requiring any
26 additional relevant information deemed necessary by the commission. The
27 interrogatories shall be completely answered within thirty days after mailing
28 of the interrogatories. With respect to corporations incorporating or
29 seeking authority to conduct affairs, articles of incorporation or an
30 application for authority shall not be filed until all outstanding
31 interrogatories have been answered to the satisfaction of the commission.
32 With respect to existing domestic and foreign corporations, if the

1 interrogatories are not answered as provided in this subsection or the
2 answers to the interrogatories otherwise indicate proper grounds for an
3 administrative dissolution, the commission shall initiate an administrative
4 dissolution in accordance with chapters 24 through 40 of this title.

5 H. On a quarterly updated basis, the commission shall provide to the
6 attorney general a list of all persons who are convicted of the crimes or who
7 are the subject of the judicial action described in subsection D, paragraph 1
8 of this section as indicated by the certificate of disclosure filed during
9 the preceding three months.

10 I. Any person who executed or contributed information for a
11 certificate of disclosure and who intentionally makes any untrue statement of
12 material fact or withholds any material fact with regard to the information
13 required in subsection D, paragraph 1 of this section is guilty of a class 6
14 felony."

15 Page 26, line 28, strike "~~and certificate of disclosure~~" insert "and certificate of
16 disclosure"

17 Lines 30 and 31, strike "~~and certificate of disclosure~~" insert "and certificate
18 of disclosure"

19 Line 37, strike "~~and certificate of disclosure~~" insert "and certificate of
20 disclosure"

21 Page 27, strike lines 1 through 9

22 Renumber to conform

23 Page 33, lines 40 and 41, strike "~~and the corporation has failed to file an~~
24 ~~affidavit of publication within sixty days~~" insert "and the corporation has
25 failed to file an affidavit OR OTHER APPROPRIATE EVIDENCE of publication
26 within sixty days"

27 Strike lines 44 and 45, insert:

28 "7. The corporation has failed to comply with section 10-3202,
29 subsection F."

30 Renumber to conform

Page 34, lines 8 and 9, strike "~~file a certificate of disclosure or~~" insert "file a certificate of disclosure or"

Line 17, strike "~~and a certificate of disclosure~~" insert "and a certificate of disclosure"

Line 18, after the period strike remainder of line

Strike line 19

Line 20, strike "~~requirements of section 10-3202, subsection F.~~" insert "The certificate of disclosure shall contain the information set forth in section 10-3202, subsection D and is subject to the requirements of section 10-3202, subsection F."

Lines 43 and 44, strike "~~and the certificate of disclosure~~" insert "and the certificate of disclosure"

Page 36, lines 35 and 36, strike "~~and the foreign corporation has failed to file an affidavit of publication within sixty days after that notice~~" insert "and the foreign corporation has failed to file an affidavit **OR OTHER APPROPRIATE EVIDENCE** of publication within sixty days after that notice"

Page 37, line 1, strike "~~file a certificate of disclosure or~~" insert "file a certificate of disclosure or"

Strike lines 22 and 23, insert:

"7. A certificate of disclosure containing the information set forth in section 10-3202, subsection D."

Renumber to conform

Strike line 26

Page 38, strike lines 4 through 13, insert:

"E. Any corporation that is exempt from the requirement of filing an annual report shall deliver annually a certificate of disclosure containing the information set forth in section 10-3202, subsection D, executed by any two executive officers or directors of the corporation on or before May 31. If the certificate is not delivered within ninety days after the due date of the annual report or within ninety days after May 31 in the case of any corporation that is exempt from the requirement of filing an annual report, the commission shall initiate administrative dissolution of that corporation

1 or revoke the application for authority of that corporation in accordance
2 with chapters 24 through 40 of this title."

3 Page 38, strike lines 14 through 25, insert:

4 "Sec. 25. Section 29-304, Arizona Revised Statutes, is amended to
5 read:

6 29-304. Specified office and agent

7 A. Each limited partnership shall continuously maintain in this state:

8 1. An office, which may but need not be a place of its business in
9 this state, at which shall be kept the records required by section 29-305 to
10 be maintained; and

11 2. An agent for service of process on the limited partnership, which
12 agent shall be an individual resident of this state, a domestic corporation,
13 A DOMESTIC LIMITED LIABILITY COMPANY, ~~or~~ a foreign corporation OR A FOREIGN
14 LIMITED LIABILITY COMPANY authorized to do business in this state. A
15 statutory agent of a limited partnership may resign as agent by delivering a
16 written notice to the secretary of state and mailing a copy of the notice to
17 the partnership at its last known address. The appointment of the agent
18 terminates thirty days after receipt of the notice by the secretary of state
19 or on the appointment of a new statutory agent, whichever occurs first.

20 B. If a limited partnership fails to appoint or maintain an agent for
21 service of process in this state or the agent for service of process cannot
22 with reasonable diligence be found at the agent's address, the secretary of
23 state is an agent of the limited partnership on whom process, notice or
24 demand may be served.

25 C. If the secretary of state accepts service of process, notice or
26 demand pursuant to subsection B of this section, the secretary of state shall
27 forward by certified mail, ~~the~~ the summons and the complaint to the limited
28 partnership at the address on file with the secretary of state at the time of
29 service.

1 D. The secretary of state is not liable for any damages incurred by
2 the limited partnership if the limited partnership does not receive the
3 summons and complaint.

4 Sec. 26. Section 29-601, Arizona Revised Statutes, is amended to read:

5 29-601. Definitions

6 In this chapter, unless the context otherwise requires:

7 1. "Articles of organization" means the initial articles of
8 organization as amended or restated from time to time.

9 2. "Assignee" means any person who acquires in any manner the
10 ownership of an interest in a limited liability company and who has not been
11 admitted as a member.

12 3. "Capital contribution" means cash, other property, the use of
13 property, services rendered or any other valuable consideration transferred
14 to a limited liability company as consideration for issuing an interest in a
15 limited liability company.

16 4. "Commission" means the corporation commission.

17 5. "Court" includes any court and judge with jurisdiction in the case.

18 6. "Domestic limited liability company" or "limited liability company"
19 means a limited liability company organized and existing under this chapter.

20 7. "Event of withdrawal" means an event that causes a person to cease
21 to be a member as provided in section 29-733.

22 8. "Executed" means executed by manual or facsimile signature on
23 behalf of the limited liability company by a duly authorized member if
24 management of the limited liability company is reserved to the members or
25 manager if management of the limited liability company is vested in a
26 manager, or if the limited liability company is in the hands of a receiver or
27 trustee, by the receiver or trustee.

28 9. "Filing" means the commission completing the following procedure
29 with respect to any document delivered for that purpose:

30 (a) Determining that the filing fee requirements of this chapter have
31 been satisfied.

1 (b) Determining that the document appears in all respects to conform
2 to the requirements of this chapter.

3 (c) On making the determinations required by this paragraph,
4 endorsement of the word "filed" with the applicable date on or attached to
5 the document and the return of copies to the person who delivered the
6 document or the person's representative.

7 10. "Foreign limited liability company" means either:

8 (a) An unincorporated entity or association that is owned by one or
9 more persons that have limited liability for the debts of the business, other
10 than a partnership or trust, and that is formed under the laws of a
11 jurisdiction other than this state for any lawful purpose, including the
12 rendering of professional services as defined in that jurisdiction.

13 (b) An entity or unincorporated association that is formed under the
14 laws of a jurisdiction other than this state for any lawful purpose,
15 including the rendering of professional services as defined in that
16 jurisdiction, and that is characterized as a limited liability company by
17 those laws.

18 11. "Initial articles of organization" means the articles of
19 organization filed with the commission at the time a limited liability
20 company is formed, including articles of organization that are corrected to
21 conform to the filing provisions of this chapter pursuant to section 29-634,
22 subsection B, paragraph 2.

23 12. "Member" means a person who is admitted as a member in a limited
24 liability company pursuant to this chapter until an event of withdrawal
25 occurs with respect to the person and, if reference is made to members, that
26 reference means a member in the case of a limited liability company that has
27 a single member. A MEMBER INCLUDES A NONECONOMIC MEMBER OF A LIMITED
28 LIABILITY COMPANY WHO:

29 (a) DOES NOT OWN A MEMBER'S INTEREST IN THE COMPANY.

30 (b) DOES NOT HAVE AN OBLIGATION TO CONTRIBUTE CAPITAL TO THE COMPANY.

(c) DOES NOT HAVE A RIGHT TO PARTICIPATE IN OR RECEIVE DISTRIBUTIONS OF PROFITS OF THE COMPANY OR AN OBLIGATION TO CONTRIBUTE TO THE LOSSES OF THE COMPANY.

(d) MAY HAVE VOTING RIGHTS AND OTHER RIGHTS AND PRIVILEGES AS PRESCRIBED BY THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT.

13. "Member's interest", "interest in a limited liability company" or "interest in the limited liability company" means a member's share of the profits and losses of a limited liability company and the right to receive distributions of limited liability company assets.

14. "Operating agreement" means either:

(a) Any written or oral agreements among all members concerning the affairs of a limited liability company or the conduct of its business.

(b) In the case of a limited liability company that has a single member, any written or oral statement of the member made in good faith purporting to govern the affairs of a limited liability company or the conduct of its business as of the effective time of the statement.

15. "Person" includes any individual, general partnership, limited partnership, domestic or foreign limited liability company, corporation, trust, business trust, real estate investment trust, estate and other association.

16. "Real property" includes land, any interest, leasehold or estate in land and any improvements on it.

17. "State" means a state, possession or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico."

Renumber to conform

Page 39, strike lines 25 through 43

Page 40, strike lines 1 through 14

Renumber to conform

Line 23, strike ":-" insert ":"

Line 24, strike "~~1.~~" Insert "1."

Page 40, strike lines 28 and 29, insert:

~~"3-~~ 2. That all of the known properties and assets of the limited liability company have been applied and distributed pursuant to this chapter."

Line 35, strike "~~filing~~ SIGNING" insert "filing"

Line 38, strike "are thereafter"

Strike line 39

Line 40, strike "company and as such"

Line 43, after "company" insert "TO WIND UP AND LIQUIDATE THE BUSINESS AND AFFAIRS OF THE LIMITED LIABILITY COMPANY"

Page 42, strike lines 24 through 45

Strike pages 43, 44 and 45

Renumber to conform

Page 45, after line 45, insert:

"Sec. 32. Section 44-1236, Arizona Revised Statutes, is amended to read:

~~44-1236.~~ Certificate of name required; exceptions

A. Any person other than a partnership transacting business in this state under a fictitious name or a designation not showing the name of the owner of the business or the name of the corporation doing such business shall record with the county recorder of the county in which the place of business is located a certificate stating in full either:

1. The name of the owner of the business and his or her place of residence, signed by the owner and acknowledged.

2. If a corporation, the name and address of the corporation, signed by the statutory agent and acknowledged.

B. A new certificate shall be recorded upon any change in ownership of the business using a fictitious name unless such business is a corporation.

C. A new certificate shall be recorded if a corporation transfers the right to use such fictitious name to another corporation.

1 D. A person or corporation doing business contrary to this section
2 shall not maintain an action upon or on account of a contract or transaction
3 made in the fictitious name in any court of this state until such person has
4 first recorded the certificate required by this section.

5 E. THIS SECTION DOES NOT APPLY TO A PERSON OR CORPORATION THAT HAS
6 EITHER:

- 7 1. FILED A TRADE NAME CERTIFICATE WITH THE SECRETARY OF STATE.
8 2. OBTAINED AUTHORIZATION FROM THE ARIZONA CORPORATION COMMISSION TO
9 CONDUCT BUSINESS AS A FOREIGN CORPORATION USING A PARTICULAR NAME."

10 Amend title to conform

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